



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

TIDEWATER REGIONAL OFFICE

Molly Joseph Ward  
Secretary of Natural Resources

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David K. Paylor  
Director

Maria R. Nold  
Regional Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT**

### **ISSUED TO**

**David J. Fowler**

**IR 2015-T-2331**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and David J. Fowler, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1401.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Fowler" means Mr. David J. Fowler, currently a resident of Southampton County, Virginia. Fowler is a "person" within the meaning of Va. Code § 10.1-1400.

5. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. “Order” means this document, also known as a “Consent Order” or “Order by Consent.”
7. “Property” means the property located on River Road in Courtland, Virginia, Tax Map ID 44-16A, which is owned by David J. Fowler.
8. “Regulations” or “VSWMR” means the Virginia Solid Waste Management Regulations, 9 VAC20-80-10 *et seq.*
9. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. “Va. Code” means the Code of Virginia (1950), as amended.
11. “VAC” means the Virginia Administrative Code.
12. “Virginia Waste Management Act” means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Fowler owns the Property located on River Road in Courtland, Virginia.
2. On April 24, 2015, Department staff inspected the Property for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
  - a. Fowler deposited solid waste consisting of construction/demolition debris, including cinder block and brick mixed with Styrofoam® like materials, as well as other foam insulating materials onto the land on the Property.
  - b. Fowler deposited solid waste consisting of construction/demolition debris, including cinder block and brick mixed with Styrofoam® like materials, as well as other foam insulating materials into an excavated area on the Property.
  - c. A review of DEQ files indicates Fowler had not been issued a solid waste permit for the disposal or management of solid waste on the Property.

3. 9 VAC 20-81-40 of the Regulations requires a permit issued by the Director for the disposal, treatment or storage of solid waste.
4. On June 2, 2015, based on the April 24, 2015 inspection and follow-up information, the Department issued a Notice of Violation to Fowler for the violations described in paragraphs C(2) and C(3), above.
5. On June 11, 2015, DEQ met with representatives of Fowler to discuss the violations.
6. Based on the results of the April 24, 2015 inspection and the June 11, 2015 meeting with Fowler representatives, the Board concludes that Fowler has violated 9 VAC 20-81-40 as described in paragraph C(2) and C(3) above.
7. On July 27, 2015, DEQ approved a Corrective Action Plan for removal of all solid waste referenced in Section C.2.a and C.2.b from the Property.
8. In order for Fowler to return to compliance, DEQ staff and representatives of Fowler have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Fowler, and Fowler agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,460.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Fowler shall indicate that the civil charge payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Fowler shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Fowler for good cause shown by Fowler, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated June 2, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Fowler admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Fowler consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Fowler declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Fowler to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Fowler shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Fowler shall demonstrate that such circumstances were beyond its control and not

due to a lack of good faith or diligence on its part. Fowler shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a) the reasons for the delay or noncompliance;
- b) the projected duration of any such delay or noncompliance;
- c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d) the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Fowler. Nevertheless, Fowler agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a) The Director or his designee terminates the Order after Fowler has completed all of the requirements of the Order;
  - b) Fowler petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Fowler.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Fowler from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Fowler and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Fowler certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Fowler to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Fowler.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Fowler voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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Regional Director  
Department of Environmental Quality

David J. Fowler voluntarily agrees to the issuance of this Order.

Date:

8/4/15

By:

[Signature]  
(Person)

[Signature]

(Title)

**Commonwealth of Virginia**

City/County of Southampton

The foregoing document was signed and acknowledged before me this 4<sup>th</sup> day of

August, 2015, by David J. Fowler.

[Signature]

Notary Public

170234

Registration No.

My commission expires: 2-28-2018

Notary Seal:

Official Seal  
Susan S Wood  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
EX: February 28, 2018  
I.D. # 170234

**APPENDIX A**

## **SCHEDULE OF COMPLIANCE**

Fowler shall:

1. By November 1, 2015, remove all solid waste referenced in Section C.2.a and C.2.b of this Order from the Property according to the approved CAP and submit records of disposal of the solid waste at a DEQ permitted solid waste management facility.
2. Mail all submittals required by this Appendix A to:

Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd  
Virginia Beach, VA 23462